



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2022-0704; FRL-10224-01-R9]

**Partial Approval, Conditional Approval, and Partial Disapproval of Air Quality State Implementation Plans; Nevada; Infrastructure Requirements for Fine Particulate Matter**  
**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve in part, conditionally approve in part, and disapprove in part a state implementation plan (SIP) revision submitted by the State of Nevada pursuant to the requirements of the Clean Air Act (CAA or “Act”) for the implementation, maintenance, and enforcement of the 2012 national ambient air quality standards (NAAQS) for particulate matter less than 2.5 micrometers in diameter (PM<sub>2.5</sub>). As part of this action, we are proposing to reclassify certain regions of the State for emergency episode planning purposes with respect to PM<sub>2.5</sub>. We are also proposing to approve an exemption from emergency episode planning requirements for PM<sub>2.5</sub> for the Nevada Division of Environmental Protection (NDEP) and Washoe County. Finally, we are proposing to approve two new definitions and four regulatory revisions into the Nevada SIP. We are taking comments on this proposal and, after considering any comments submitted, plan to take final action.

**DATES:** Written comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0704 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information

(CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Tom Kelly, Air Planning Office (AIR-2), U.S. Environmental Protection Agency, Region IX, (415) 972-3856, [kelly.thomasp@epa.gov](mailto:kelly.thomasp@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms “we,” “us,” and “our” refer to EPA.

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## **I. The EPA’s Approach to the Review of Infrastructure SIP Submissions**

The EPA is proposing action on a SIP submittal from Nevada that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the primary and secondary 2012 PM<sub>2.5</sub> NAAQS. The requirement for states to submit a SIP revision of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submittals “within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),” and these SIP submittals are to provide for the “implementation, maintenance, and enforcement” of such NAAQS. The statute directly imposes on states the duty to make these SIP submittals, and the requirement to make the submittals is not conditioned upon the EPA’s taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that “[e]ach such plan” submittal must address.

The EPA has historically referred to these SIP submittals made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submittals. Although the term “infrastructure SIP” does not appear in the CAA, the EPA uses the term to distinguish this particular type of SIP submittal from submittals that are intended to satisfy other SIP requirements under the CAA, such as “nonattainment SIP” or “attainment SIP” submittals to address the nonattainment planning requirements of part D of title I of the CAA, “regional haze SIP” submittals required to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NSR) permit program submittals to address the permit requirements of CAA, title I, part D.

Historically, the EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in other cases conveying interpretations that have already been developed and applied to individual SIP submittals for particular elements.<sup>1</sup> The EPA most recently issued guidance for

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<sup>1</sup> We note, however, that nothing in the CAA requires the EPA to provide guidance or to promulgate regulations for infrastructure SIP submittals. The CAA directly applies to states and requires the submittal of infrastructure SIP

infrastructure SIPs on September 13, 2013 (“2013 Infrastructure SIP Guidance”).<sup>2</sup> The EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, the EPA describes the duty of states to make infrastructure SIP submittals to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. The EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submittals.<sup>3</sup> The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, the EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submittals need to address certain issues and need not address others. Accordingly, the EPA reviews each infrastructure SIP submittal for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submittals. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, the EPA reviews infrastructure SIP submittals to ensure that the state’s SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Infrastructure SIP Guidance explains the EPA’s interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state’s permitting or enforcement program (e.g., whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state,

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submittals, regardless of whether or not the EPA provides guidance or regulations pertaining to such submittals. The EPA elects to issue such guidance in order to assist states, as appropriate.

<sup>2</sup> “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),” Memorandum from Stephen D. Page, September 13, 2013.

<sup>3</sup> The EPA’s September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submittals to address section 110(a)(2)(D)(i)(I). The EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City*, 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, the EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether the EPA elects to provide guidance on a particular section has no impact on a state’s CAA obligations.

the substantive requirements of section 128 are necessarily included in the EPA's evaluation of infrastructure SIP submittals because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, the EPA's review of infrastructure SIP submittals with respect to the prevention of significant deterioration (PSD) program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C, title I of the Act and the EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and regulated NSR pollutants, including greenhouse gases. By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 Code of Federal Regulations (CFR) 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 PM<sub>2.5</sub> NAAQS. Accordingly, the latter optional provisions are types of provisions the EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, the EPA's review of a state's infrastructure SIP submittal focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia*, the requirement that states have a program to regulate minor new sources. Thus, the EPA evaluates whether the state has a SIP-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submittal, however, the EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (i.e., already in the existing SIP) for compliance with the requirements of the CAA and the EPA's regulations that pertain to such programs.

With respect to certain other issues, the EPA does not believe that an action on a state's infrastructure SIP submittal is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include existing provisions related to

“director’s variance” or “director’s discretion” that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by the EPA and existing provisions for PSD programs that may be inconsistent with current requirements of the EPA’s “Final NSR Improvement Rule.”<sup>4</sup> Thus, the EPA believes it may approve an infrastructure SIP submittal without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submittal even if it is aware of such existing provisions.<sup>5</sup> It is important to note that the EPA’s approval of a state’s infrastructure SIP submittal should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

The EPA’s approach to the review of infrastructure SIP submittals is to identify the CAA requirements that are logically applicable to that submittal. The EPA believes that this approach to the review of a particular infrastructure SIP submittal is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state’s existing SIP against all requirements in the CAA and the EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of “implementation, maintenance, and enforcement” of a new or revised NAAQS when the EPA evaluates adequacy of the infrastructure SIP submittal. The EPA believes that a better approach is for states and the EPA to focus attention on those elements of

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<sup>4</sup> 67 FR 80186, December 31, 2002, as amended by 72 FR 32526, June 13, 2007.

<sup>5</sup> By contrast, the EPA notes that if a state were to include a new provision in an infrastructure SIP submittal that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then the EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, the EPA's 2013 Infrastructure SIP Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submittal for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, the EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes the EPA to issue a "SIP call" whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.<sup>6</sup> Section 110(k)(6) authorizes the EPA to correct errors in past actions, such as past approvals of SIP submittals.<sup>7</sup> Significantly, the EPA's determination that an action on a state's infrastructure SIP submittal is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude the EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all

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<sup>6</sup> For example, the EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 76 FR 21639, April 18, 2011.

<sup>7</sup> The EPA has used this authority to correct errors in past actions on SIP submittals related to PSD programs. See "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536, December 30, 2010. The EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664, July 25, 1996 and 62 FR 34641, June 27, 1997 (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062, November 16, 2004 (corrections to California SIP); and 74 FR 57051, November 3, 2009 (corrections to Arizona and Nevada SIPs).

existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submittal, the EPA believes that section 110(a)(2)(A) may be among the statutory bases that the EPA relies upon in the course of addressing such deficiency in a subsequent action.<sup>8</sup>

## **II. Background**

### *A. Statutory Framework*

Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must include. The infrastructure SIP elements required by section 110(a)(2) are as follows:

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C): Program for enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a)(2)(D)(i): Interstate pollution transport.
- Section 110(a)(2)(D)(ii): Interstate pollution abatement and international air pollution.
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local government and regional agencies.
- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J): Consultation with government officials, public notification, PSD, and visibility protection.
- Section 110(a)(2)(K): Air quality modeling and submittal of modeling data.
- Section 110(a)(2)(L): Permitting fees.

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<sup>8</sup> See, e.g., the EPA's disapproval of a SIP submittal from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344, July 21, 2010 (proposed disapproval of director's discretion provisions); 76 FR 4540, January 26, 2011 (final disapproval of such provisions).



- Section 110(a)(2)(M): Consultation and participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the three-year submittal deadline of section 110(a)(1) and are therefore not addressed in this action. These two elements are: Section 110(a)(2)(C) to the extent it refers to permit programs required under part D (nonattainment NSR), and Section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address requirements for the nonattainment NSR portion of section 110(a)(2)(C) or the whole of section 110(a)(2)(I).

### *B. Regulatory History*

On January 15, 2013, the EPA promulgated a revised primary NAAQS for PM<sub>2.5</sub>, (“the 2012 PM<sub>2.5</sub> NAAQS”), triggering a requirement for states to submit infrastructure SIPs by December 15, 2015. The revised standard lowered the annual PM<sub>2.5</sub> NAAQS to 12.0 micrograms per cubic meter (µg/m<sup>3</sup>) to provide increased protection against health effects associated with long- and short-term exposures (including premature mortality, increased hospital admissions and emergency department visits, and development of chronic respiratory disease).<sup>9</sup>

## **III. State Submittal**

### *A. Infrastructure SIP Submittal*

The NDEP made a submittal addressing the infrastructure SIP requirements for the 2012 PM<sub>2.5</sub> NAAQS on December 11, 2015 (“Nevada’s Infrastructure SIP Submittal”).<sup>10</sup> It included separate sections for Clark County<sup>11</sup> and Washoe County.<sup>12</sup> We refer to each individual section

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<sup>9</sup> 78 FR 3086 (January 15, 2013).

<sup>10</sup> Letter and enclosures from David Emme, Administrator, NDEP, to Jared Blumenfeld, Regional Administrator, EPA Region IX, RE: The Nevada State Implementation Plan for the 2012 Annual Primary Fine Particulate Matter NAAQS, dated December 11, 2015, with enclosures including the Nevada Division of Environmental Protection Portion of the Nevada State Implementation Plan for the 2012 Annual Primary Fine Particulate Matter NAAQS, dated December 11, 2015.

<sup>11</sup> Letter from Lewis Wallenmeyer, Director, Clark County Department of Air Quality, to David Emme, Administrator, NDEP, Subject: the Clark County Portion of the PM<sub>2.5</sub> State Implementation Plan, dated August 20, 2015, including the enclosed Clark County Portion of the State Implementation Plan to Meet the PM<sub>2.5</sub> SIP Requirements of the Clean Air Act Section 110(a)(2), dated August 2015.

<sup>12</sup> Letter from Charlene Albee, Director, Washoe County Health District, to Dave Emme, Administrator, Nevada Division of Environmental Protection, Subject: PM<sub>2.5</sub> State Implementation Plan for the 2012 Annual NAAQS, dated December 4, 2015, with enclosures, including: the Washoe County Portion of the Nevada State Implementation Plan to Meet the PM<sub>2.5</sub> Infrastructure SIP Requirements of Clean Air Act Section 110(a)(2), dated October 22, 2015.

as that agency's or County's portion of the submittal. In accordance with CAA section 110(k)(1)(B), the infrastructure SIP became complete by operation of law on June 11, 2016.

As noted in each respective portion of the submittal, the NDEP, Clark County, and Washoe County all provided public notice and an opportunity for public comment prior to finalizing each portion of the infrastructure SIP submittal. Additionally, each agency either held or offered to hold a public hearing as part of the public notice and comment period. Notice, hearing, and adoption dates for each portion of the submittal are shown in Table 1. We find that these submittals meet the procedural requirements for public participation under CAA section 110(a)(2) and 40 CFR 51.102.

<b>Table 1 – Notification and Opportunities for Public Comment on the Nevada SIP</b>				
<b>Agency</b>	<b>Submittal</b>	<b>Start of Public Notice</b>	<b>Hearing Date</b>	<b>Adoption Date</b>
NDEP	Nevada Division of Environmental Protection Portion of the Nevada State Implementation Plan for the 2012 Annual Primary Fine Particulate Matter NAAQS	October 19, 2015	None <sup>a</sup>	December 11, 2015
Clark County Board of Commissioners	Clark County Portion of the State Implementation Plan to Meet the PM <sub>2.5</sub> SIP Requirements of the Clean Air Act Section 110(a)(2);	June 20, 2015	August 18, 2015	August 18, 2015
Washoe County District Board of Health	The Washoe County Portion of the Nevada State Implementation Plan to Meet the PM <sub>2.5</sub> Infrastructure SIP Requirements of Clean Air Act Section 110(a)(2)	September 21, 2015	October 22, 2015	October 22, 2015

<sup>a</sup> The hearing was tentatively scheduled for November 19, 2015, but cancelled because no one requested a hearing.

### *B. New and Revised Rules*

In its December 11, 2015 letter transmitting the Nevada Infrastructure SIP Submittal, the NDEP included several new and revised rules for incorporation into the Nevada SIP.<sup>13</sup> Along with the new and revised rules, the NDEP included documentation of the public comment period, which began on September 14, 2015; the public hearing, on October 14, 2015; and proof of adoption by the State Environmental Commission.

<sup>13</sup> See Enclosure NDEP 2012 PM<sub>2.5</sub> NAAQS Infrastructure SIP, December 11, 2015, Nevada Division of Environmental Protection Regulatory Amendments for Approval into the Applicable Nevada SIP.

1. What Rules did the State Submit

Table 2 provides a list of the new and revised rules, which are included in the docket for this rulemaking.

<b>Table 2: New and Revised Rules Submitted by Nevada for Adoption into the SIP</b>					
<b>Agency</b>	<b>Nevada Administrative Code (NAC) Rule Number</b>	<b>New/Previous EPA Rule Approval</b>	<b>Adoption Date</b>	<b>Submittal Date</b>	<b>Rule Title</b>
Nevada Environmental Commission	445B.1349	New	10/27/2015	12/11/2015	Definition of “PM <sub>2.5</sub> emissions”
	445B.1355	New	10/27/2015	12/11/2015	Definition of “PM <sub>10</sub> emissions”
	Revision to 445B.2203	May 8, 2007 (72 FR 25971)	10/27/2015	12/11/2015	Emissions of particulate matter: Fuel-burning equipment
	Revision to 445B.2207	March 27, 2006 (71 FR 15040)	10/27/2015	12/11/2015	Incinerator burning
	Revision to 445B.22096	August 23, 2012 (77 FR 50936)	10/27/2015	12/11/2015	Control measures constituting BART; limitations on emissions
	Revision to 445B.22097	October 21, 2014 (79 FR 62851)	10/27/2015	12/11/2015	Standards of quality for ambient air

2. What is the Purpose of the Submitted Rule Revisions

The regulations were proposed “to further align [Nevada’s regulations] with the national ambient air quality standards (NAAQS) currently in effect,” and include “new definitions for PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions to clarify that direct gaseous emissions from a source that condense to form particulate matter... are included in those terms, as required by federal regulation.”<sup>14</sup>

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<sup>14</sup> Department of Conservation and Natural Resources, which includes the Nevada Division of Environmental Protection, State Environmental Commission, Notice of Regulatory Hearing Adoption of Regulations and Other Matters Before the State Environmental Commission Public Notice, SEC Public Hearing October 14, 2015.

The new regulations support or address infrastructure SIP requirements for the 2012 PM<sub>2.5</sub> NAAQS by strengthening the control of PM<sub>2.5</sub> emissions. Rules in the Nevada Administrative Code (NAC) 445B.1349 and 445.1355 would, for the first time, define PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions to include vapor emissions that can condense to form PM<sub>10</sub>.<sup>15</sup> The EPA clarified that condensable PM<sub>2.5</sub> must be covered in PSD and nonattainment new source review permitting in a memorandum dated April 14, 2014.<sup>16</sup> The EPA's 2013 Infrastructure SIP Guidance explained that the EPA will evaluate structural elements of a state's PSD program, which includes provisions to regulate all NSR pollutants, including condensable PM and its precursor emissions.<sup>17</sup> The revisions to NAC 445B.2203, NAC 445B.2207 and NAC 445B.22096 change language related to PM<sub>10</sub> emissions to be consistent with NAC 445B.1355, which strengthens the controls for specific sources by controlling condensable PM<sub>10</sub> emissions. The change to NAC 445B.22097 would lower the State's annual average standard for PM<sub>2.5</sub> to 12.0 µg/m<sup>3</sup>, consistent with the 2012 PM<sub>2.5</sub> NAAQS. It would also remove the State annual average standard for PM<sub>10</sub>, which the EPA revoked in a final rule published on October 17, 2006 (71 FR 61144) but leaves the State 24-hour PM<sub>10</sub> NAAQS in place, consistent with the EPA's 24-hour PM<sub>10</sub> NAAQS.

### *C. Commitment Letters*

In addition to the submittals identified in Table 1, NDEP and Washoe County submitted letters committing to develop, adopt, and submit rules meeting the public notice requirements of CAA section 127, which are cross-referenced in CAA section 110(a)(2)(J), within one year of our final action conditionally approving both agencies for the requirement.<sup>18</sup> CAA section 127

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<sup>15</sup> This rulemaking does not alter the definition of PM<sub>10</sub> at NAC 445B.135, adopted into the SIP in a final rule on March 26, 2006 (FR 71 FR 15040).

<sup>16</sup> Memorandum from Stephen D. Page, Office of Air Quality Planning and Standards, to EPA Regional Air Division Directors, Regions 1-10, dated April 8, 2014, regarding: Interim Guidance on the Treatment of Condensable Particulate Matter Test Results in the Permitting Programs.

<sup>17</sup> "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013, pp. 25-29.

<sup>18</sup> Letter from Greg Lovato, Administrator Nevada Division of Environmental Protection, to Martha Guzman, Regional Administrator, U.S. EPA Region IX, Re: Request for Conditional Approval of Nevada's Infrastructure

requires that each state's EPA-approved SIP contain measures to notify the public of instances where any NAAQS is exceeded, advise the public of health hazards related to any exceedance, and provide information on ways to prevent such standards from being exceeded in the future. While NDEP and Washoe County provide notifications to the public in the event of a NAAQS exceedance, neither agency's EPA-approved SIP contains measures requiring such notifications. CAA section 110(k)(4) authorizes the EPA to conditionally approve a plan revision based on a commitment by the state to adopt specific enforceable measures by a date certain but not later than one year after the date of the plan approval.

#### **IV. The EPA's Evaluation and Proposed Action**

##### *A. Proposed Approvals and Partial Approvals*

##### **1. Infrastructure SIP**

We have evaluated Nevada's Infrastructure SIP Submittal and the existing provisions of the Nevada SIP for compliance with the infrastructure SIP requirements (or "elements") of CAA section 110(a)(2) and applicable regulations in 40 CFR part 51 ("Requirements for Preparation, Adoption, and Submittal of State Implementation Plans"). The Technical Support Document (TSD), which is available in the docket to this proposed rulemaking, includes our evaluation of all of the elements and rationale for our proposed action, as well as our evaluation of various statutory and regulatory provisions. For some requirements, we refer to prior actions and TSDs for Nevada Infrastructure SIPs, which are also included in the docket for this rulemaking.

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State Implementation Plan for the 2012 PM<sub>2.5</sub> and 2015 Ozone National Ambient Air Quality Standards, dated September 9, 2022 and Letter from Greg Lovato, Administrator Nevada Division of Environmental Protection to Martha Guzman, Regional Admin, Re: Nevada's Infrastructure State Implementation Plan for the 2012 PM<sub>2.5</sub> National Ambient Air Quality Standard dated September 9, 2022 that enclosed the letter from Francisco Vega, Director, Air Quality Management Division, Washoe County Health Division to Greg Lovato, Administrator, Nevada Division of Environmental Protection and Martha Guzman, EPA, Re: Request for Conditional Approval of Nevada's Infrastructure State Implementation Plan for the 2012 PM<sub>2.5</sub> and 2015 Ozone National Ambient Air Quality Standards, dated September 2, 2022.

Based on the analysis in this proposed rulemaking and discussed in detail in our TSD, we propose to approve Nevada's Infrastructure SIP with respect to the following Clean Air Act requirements:<sup>19</sup>

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C) (in part): Program for enforcement of control measures (full approval), and regulation of new stationary sources (approval for Clark County only) and minor sources (full approval).
- 110(a)(2)(D) (in part): Interstate Pollution Transport.
  - 110(a)(2)(D)(i)(I) - significant contribution to a nonattainment area (prong 1).
  - 110(a)(2)(D)(i)(II) - interference with a maintenance area (prong 2).
  - 110(a)(2)(D)(i)(III) (in part) - interference with PSD (prong 3) (approval for Clark County only) and visibility transport (prong 4) (deferred).
  - 110(a)(2)(D)(ii) (in part) - interstate pollution abatement (approval for Clark County only) and international air pollution.
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency episodes.
- 110(a)(2)(H): SIP revisions.
- 110(a)(2)(J) (in part): Consultation with government officials, public notification (conditional approval for NDEP and Washoe County, approval for Clark County), and PSD and visibility protection (approval for Clark County only).
- 110(a)(2)(K): Air quality modeling and submission of modeling data.

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<sup>19</sup> All approvals are full approvals for NDEP, Clark County, and Washoe County except where noted otherwise.

- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

## 2. Proposed Approval of State Provisions into the Nevada SIP

As part of our proposed approval of Nevada's infrastructure SIP submittal, we are also proposing to approve several State regulations into the Nevada SIP. Specifically, we propose to approve into the SIP six provisions from the Nevada Administrative Code. Two new provisions, NAC 445B.1349 and NAC 445B.1355, define "PM<sub>2.5</sub> emissions" and "PM<sub>10</sub> emissions" to include vapors that can condense to form PM<sub>2.5</sub> and PM<sub>10</sub>. Three provisions are revisions to NAC 445B.2203, NAC 445B.2207, and NAC 445B.22096 and replace the term "emissions of PM<sub>10</sub>" with "PM<sub>10</sub> emissions." Finally, NAC 445B.22097 revises the State annual PM<sub>2.5</sub> emissions standard from 15.0 µg/m<sup>3</sup> to 12.0 µg/m<sup>3</sup> to be consistent with the 2012 PM<sub>2.5</sub> NAAQS.

The current revision to NAC 445B.22096 aligns a reference to PM<sub>10</sub> emissions with the new definition for PM<sub>10</sub> emissions in NAC 445B.1355, which strengthens the SIP by regulating condensable PM<sub>10</sub> emissions. However, the EPA had previously disapproved a portion of NAC 445B.22096 in 2012 addressing the NO<sub>x</sub> averaging time and control type for units 1, 2, and 3 and the NO<sub>x</sub> emission limit for unit 3 at the Reid Gardner Generating Station (RGGS).<sup>20</sup> In addition to disapproving a portion of NAC 445B.22096 in 2012, the EPA promulgated a Federal Implementation Plan (FIP) to replace the disapproved portions of the rule.<sup>21</sup> Since that time, RGGS has closed and the EPA has rescinded its FIP.<sup>22</sup> Because of the facility's closure and decommission, the provisions covering emissions from RGGS are no longer applicable. Therefore, although the current revision to NAC 445B.22096 includes provisions for RGGS that the EPA previously disapproved, because RGGS has now closed, approving this rule into the SIP

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<sup>20</sup> 77 FR 50936 (August 23, 2012).

<sup>21</sup> Id.

<sup>22</sup> The rescission of the Nevada Regional Haze FIP was finalized in a rule published on October 26, 2018 (83 FR 54053).

does not change the status of RGGS and otherwise strengthens the SIP by regulating condensable PM<sub>10</sub> emissions.

As a general matter, rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193). We have evaluated the NDEP's new and revised rules for compliance with CAA requirements for SIPs, set forth in CAA section 110(a)(2), and for compliance with CAA requirements for SIP revisions in CAA sections 110(l) and 193. In general, the rules either strengthen the SIP or clarify certain terms in the SIP, as discussed in section III.B.2. of this proposed rulemaking and in our TSD. Based upon our analysis, we propose to find the NDEP rules meet the requirements of CAA sections 110(a)(2), 110(l), and 193. Therefore, the EPA is proposing to approve the submitted new and revised rules into the Nevada SIP.

### *B. Exemptions; Conditional Approvals*

#### *1. Exemptions*

For emergency episode planning, the priority thresholds for classification of Air Quality Control Regions (AQCR) of a state are listed in 40 CFR 51.150. AQCRs classified Priority I, IA, or II are required to have SIP-approved emergency episode contingency plans, while those classified Priority III are not required to have plans.<sup>23</sup> Classification of Nevada's AQCRs is located at 40 CFR 52.1471. However, there are currently no priority classifications for PM<sub>2.5</sub>. As explained in our TSD, we have instead relied upon 2009 guidance for the 2006 PM<sub>2.5</sub> NAAQS, which includes recommendations for evaluating emergency episode requirements under the CAA.<sup>24</sup> Under the 2009 guidance, any AQCR with 24-hour PM<sub>2.5</sub> ambient air concentrations

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<sup>23</sup> 40 CFR 51.151 and 51.152.

<sup>24</sup> Memorandum from: William T. Harnett, Policy Division Director, EPA, to: Regional Air Division Directors, Regions I-X, Subject: Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS), dated September 25, 2009.



above 140.4  $\mu\text{g}/\text{m}^3$  must have a SIP-approved emergency episode contingency plan under 110(a)(2)(G). The only AQCR in Nevada with ambient air concentrations above this level is the Northwest Nevada Intrastate AQCR, which had a maximum  $\text{PM}_{2.5}$  24-hour concentration of 241.6  $\mu\text{g}/\text{m}^3$  in 2021.<sup>25</sup> Washoe County and several counties within the jurisdiction of NDEP that are part of the Northwest Nevada Intrastate AQCR are therefore required to have SIP-approved contingency plans. While the NDEP and Washoe County have SIP-approved emergency episode contingency plans, only the Washoe County plan addresses  $\text{PM}_{2.5}$ , whereas the NDEP plan does not. However, under 40 CFR 51.152(d)(1), the EPA may exempt from the emergency episode contingency plan requirements any AQCR that is in attainment for the relevant NAAQS. Because the Northwest Nevada Intrastate AQCR is in attainment for the 2012  $\text{PM}_{2.5}$  NAAQS,<sup>26</sup> we are proposing to exempt the Northwest Nevada Intrastate AQCR from the contingency plan requirements of CAA section 110(a)(2)(G).

## 2. Conditional Approvals

CAA section 110(k)(4) authorizes the EPA to conditionally approve a plan revision based on a commitment by the state to adopt specific enforceable measures by a date certain but not later than one year after the date of the plan approval. In letters dated September 2, 2022 and September 9, 2022, the NDEP and Washoe County committed to adopt and submit specific enforceable measures to address the identified deficiencies under CAA section 110(a)(2)(J) discussed in Sections III.C. and IV.A. of this proposed rulemaking and in our TSD.<sup>27</sup> Accordingly, pursuant to section 110(k)(4) of the Act, the EPA is proposing a conditional approval of the portions of the NDEP and Washoe County Infrastructure SIP Submittals addressing the public notification requirements of CAA section 110(a)(2)(J) for the 2012  $\text{PM}_{2.5}$  NAAQS.

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<sup>25</sup> The monitoring data are available in the docket for this proposal.

<sup>26</sup> 80 FR 2206 (January 15, 2015).

<sup>27</sup> Clark County has satisfied this requirement through Air Quality Regulation 4.5, approved into the SIP in a rule published on April 21, 2022 (87 FR 23765).

If the NDEP and Washoe County meet their commitments to submit the required revisions within 12 months of the EPA's final action on this SIP submittal, and the EPA approves the submission, then the deficiencies listed above will be cured. However, if the NDEP or Washoe County fails to submit these revisions within the required timeframe, the conditional approvals shall become disapprovals.

*C. Proposed Partial Disapprovals*

The EPA proposes to disapprove Nevada's Infrastructure SIP Submittals with respect to the following infrastructure SIP requirements:

- 110(a)(2)(C) (in part): Regulation of new and modified stationary sources (disapproval for the NDEP and Washoe County).
- 110(a)(2)(D)(i)(II) (in part): interference with PSD (prong 3) (disapproval for the NDEP and Washoe County).
- 110(a)(2)(D)(ii) (in part): interstate pollution abatement (disapproval for the NDEP and Washoe County).
- 110(a)(2)(J) (in part): PSD (disapproval for the NDEP and Washoe County).

As explained more fully in our TSD, we are proposing to disapprove the NDEP and Washoe County portions of Nevada's Infrastructure Submittals with respect to the PSD-related requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), 110(a)(2)(D)(ii), and 110(a)(2)(J). The Nevada SIP does not fully satisfy the statutory and regulatory requirements for PSD permit programs under part C, title I of the Act, because the NDEP and Washoe County do not currently have SIP-approved PSD programs. Although the NDEP and Washoe County portions of the SIP remain deficient with respect to PSD requirements, there would be no consequences of this proposed disapproval, as both agencies implement the Federal PSD program at 40 CFR 52.21 for all regulated NSR pollutants, pursuant to delegation agreements with the EPA.<sup>28</sup>

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<sup>28</sup> See 40 CFR 52.1485. The EPA fully delegated the implementation of the Federal PSD programs to NDEP on October 19, 2004 ("Agreement for Delegation of the Federal Prevention of Significant Deterioration (PSD) Program

#### *D. Deferred Action*

On August 12, 2022, NDEP withdrew its submittal of the Prong 4 element in the 2015 Nevada Infrastructure SIP Submittal and submitted a revised Prong 4 element with the State's Regional Haze Plan for the 2<sup>nd</sup> Planning Period.<sup>29</sup> The EPA intends to act on the revised Prong 4 element when we act on Nevada's Regional Haze Plan for the 2<sup>nd</sup> Planning Period.

#### *E. Request for Public Comments*

The EPA is soliciting public comments on this proposed rulemaking. We will accept comments from the public for the next 30 days. We will consider any comments received before taking final action.

### **V. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the NDEP rules listed in Table 2 and discussed in section III.B.2. of this preamble. The EPA has made, and will continue to make, these documents generally available electronically in the docket for this rulemaking at <https://www.regulations.gov>.

### **VII. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting Federal requirements and does not impose

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by the United States Environmental Protection Agency, Region 9 to the Nevada Division of Environmental Protection”), as updated on September 15, 2011 and November 7, 2012, and to Washoe County on March 13, 2008 (“Agreement for Delegation of the Federal Prevention of Significant Deterioration (PSD) Program by the United States Environmental Protection Agency, Region 9 to the Washoe County District Health Department”).

<sup>29</sup> See letter dated August 12, 2022, from Greg Lovato, Administrator, Nevada Department of Environmental Protection, to Martha Guzman, Regional Administrator, EPA Region 9, re: The Nevada State Implementation Plan for the Regional Haze Rule for the Second Planning Period; Withdrawal and Replacement of Elements of the 2012 PM<sub>2.5</sub> NAAQS and 2015 Ozone NAAQS Infrastructure SIPs.

additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

The State did not evaluate environmental justice considerations as part of its SIP submittal. There is no information in the record inconsistent with the stated goals of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

In addition, the SIP is not approved to apply on any Indian reservation land or in any

other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Approval and promulgation of implementation plans, Air pollution control, Environmental protection, Incorporation by reference, Intergovernmental relations, Particulate matter, PM<sub>2.5</sub>, PM<sub>10</sub>, Reporting and recordkeeping requirements.

Dated: October 15, 2022.

Martha Guzman Aceves,  
*Regional Administrator,*  
*Region IX.*

[FR Doc. 2022-22864 Filed: 10/19/2022 8:45 am; Publication Date: 10/20/2022]